

IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT, STATE OF FLORIDA

TOWN OF MIAMI LAKES,
FLORIDA, and WAYNE SLATON,

Appellants,

CONSOLIDATED
DCA Case Nos. 3D15-747 &
3D15-753
L.T. Case No.
15-000256-CA-01 (08)

vs.

MICHAEL A. PIZZI, JR., and
MARY COLLINS,

Appellees.

**INITIAL BRIEF OF APPELLANT,
WAYNE SLATON**

Appeal From a Final Order of the Circuit Court

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STATEMENT OF CASE AND FACTS¹

Appellant, Mayor Wayne Slaton, appeals a Final Declaratory Judgment ousting him as the Mayor of Miami Lakes and reinstating Appellee, the former mayor, Michael Pizzi. Respectfully, the final judgment should be reversed because, among other reasons, the trial court misinterpreted and incorrectly applied a binding Florida Supreme Court order, Miami Lakes' Charter, and applicable law.

Miami Lakes is governed by a Town Charter, which was duly adopted by referendum in 2000. [A 47] Under the Charter's provisions, Mr. Pizzi was elected Mayor of Miami Lakes on November 6, 2012 for a four-year term of office. [A 53] Upon taking office, Mr. Pizzi took an oath swearing he would support and defend the Charter. [A 696]

During Mr. Pizzi's first year in office, he was charged with federal crimes. [A 82-83] He was later indicted. [A 96-125] Based on the arrest, in August 2013 Governor Rick Scott issued an executive order suspending him from office pursuant to section 112.51, Florida Statutes. [A 80-81]

Under Miami Lakes' Town Charter—which has the effect of law—if more than six months remain in the mayor's term at the time the mayor is suspended, a vacancy is created by the suspension and Miami Lakes is required to hold a special

¹The parties are abbreviated as follows: Town of Miami Lakes ("**Miami Lakes**"); Mayor Wayne Slaton ("**Mayor Slaton**"); Michael A. Pizzi ("**Mr. Pizzi**"). Record references are to page number of the Appendix, which page numbers match the .pdf page numbers of the appendix (*e.g.*, [A 1] references Appendix, .pdf page 1).

election to elect a new mayor. [A 54-55] At the time Mr. Pizzi was suspended, three years were left in his term. [A 72] Pursuant to the Charter, a special election was held on October 1, 2013, in which Wayne Slaton was elected and took office.² [A 95]

A year after he was suspended, Mr. Pizzi was found not guilty. [A 128] He then demanded that Governor Scott revoke the suspension order and reinstate him to office, asserting section 112.51 required reinstatement. [A 130-32, 592] Section 112.51(6) provides that, if a municipal official is acquitted of criminal charges for which the official was suspended, the Governor shall revoke the suspension and restore the official to office—and the official shall be entitled to back pay and other emoluments. However, the statute further provides that if, as here, the official's "term of office expires" and a successor is elected, the official shall not be reinstated:

If, during the suspension, the term of office of the municipal official expires and a successor is either appointed or elected, such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal official was suspended under the provisions of this section, and he or she shall not be reinstated.

§ 112.51(6), Fla. Stat.

Governor Scott denied Mr. Pizzi's demand for reinstatement because, pursuant to Miami Lakes' Charter, Mr. Pizzi's term expired when Mayor Slaton

² The special election cost Miami Lakes \$50,159. [A 455-57]

was elected to fill the vacancy created by Mr. Pizzi's suspension from office. [A 133-35]

Mr. Pizzi then filed a petition for writ of mandamus in the Florida Supreme Court, asking the Court to direct Governor Scott to vacate Mr. Pizzi's suspension order. [A 468-79] Mr. Pizzi told the Court he was not asking to be reinstated at that time; he was simply asking that the suspension order be vacated. [A 593-94] Vacating the suspension order would allow him to receive certain benefits, such as back pay before the vacancy was filled by the new mayor. [A 552] Mr. Pizzi did, however, advise the Court that, because this was a case of first impression, an opinion by the Court would provide guidance on the effect of vacating the suspension order, stating: "This is the type of case in which an opinion from this Court would provide important guiding principles for the other courts of this State." [A 596]

Governor Scott's response to Mr. Pizzi's petition stated in part:

After reviewing the Charter, and in consultation with the Miami Lakes town counsel, it was determined that Mayor Slaton was elected to serve out the term of office as [Mr. Pizzi's] replacement. Therefore, Petitioner's term ended when Mayor Slaton was elected and assumed office.

[A 588 (emphasis added)] As such, the Governor believed that the issue of suspension was moot. [*See id.*]

The Supreme Court subsequently asked Governor Scott to file a further response on the narrow issue of whether the suspension order should be revoked. [A 599-600] In its order, the Supreme Court specified that it was "not, however, suggesting that Governor Scott is required to order that [Mr. Pizzi] be reinstated to his former municipal office, which has been filled by operation of a special election in accordance with the Charter of the Town of Miami Lakes, Florida." [A 599 (emphasis added)] In his response, Governor Scott again emphasized that Mr. Pizzi was not entitled to reinstatement because, under the Charter, his term, and therefore his suspension, had expired. [A 601-05] He argued that, because he was not required to reinstate Mr. Pizzi, he was likewise not required to revoke the suspension order. [*Id.*]

Thereafter, on December 22, 2014, the Supreme Court issued an order directing the Governor to vacate the suspension order, holding that section 112.51(6) requires revocation of the suspension order. [A 613-14] But the Court explicitly stated it was not requiring the Governor to reinstate Mr. Pizzi to office and emphasized that Mayor Slaton had been elected as a "permanent replacement mayor." The Court stated, in part:

During [Mr. Pizzi's] suspension, [Miami Lakes] held a special election for mayor in accordance with the requirements of its charter. The permanent replacement mayor [Mayor Slaton] assumed office on October 8, 2013, and the new mayor's term will run until the next regularly scheduled election in November 2016.

. . . .

In the order to show cause, this Court stated that it was not suggesting that the Governor is required to reinstate Petitioner to his former municipal office, which has been filled by operation of a special election in accordance with the Town's charter.

[A 613 (emphasis added)] The Court further stated that, because it believed the Governor would comply with its directive, it would withhold issuance of the writ of mandamus until January 2, 2015. [*Id.*]

In compliance with the Supreme Court's directive, on December 22, 2014—which was the same date the Supreme Court issued its Order—the Governor vacated the suspension order. [A 141-42] No further proceedings were held before the Supreme Court, and Mr. Pizzi never filed any further documents with the Court asserting that anything further needed to be done by the Governor.

Just 15 days after the Governor vacated the suspension order, Mr. Pizzi brought this action, in which he asserts he must be reinstated to office. Circuit Judge Gisela Cardonne Ely subsequently issued a final judgment ordering that Mr. Pizzi be reinstated to office.³ [A 778-92]

³ The Complaint contains seven counts. [A 8-39] Mayor Slaton moved to dismiss all but Count III of the Complaint, asserting that quo warranto was the only available remedy and that a multi-count declaratory judgment action naming Miami Lakes and its Clerk was improper. [A 148-60] Judge Cardonne Ely denied the motion to dismiss. [A 618-19, 699-700] Miami Lakes' clerk was eventually dropped by agreement of the parties. [A 312]

In the final judgment, Judge Cardonne Ely reaches the following conclusions:

- Quo warranto is not an appropriate remedy because Mayor Slaton did not become mayor illegally. Instead, declaratory relief is the proper remedy [A 781-92];
- The Governor failed to comply with the Supreme Court's order, because the Governor was required to, but did not, reinstate Mr. Pizzi to office [A 780];
- Section 112.51 required Governor Scott to reinstate Mr. Pizzi to office upon his acquittal and he failed to do so [A 790];
- The Governor's suspension merely created a temporary vacancy [A 784-85];
- Mr. Pizzi's term of office does not expire until the end of 2016 because his suspension was merely temporary [A 784];
- Mayor Slaton's election was a temporary appointment [A 785];
- If the Charter is read to make Mayor Slaton a permanent replacement, the Charter unlawfully conflicts with section 112.51 and therefore section 112.51 preempts the Charter [A 785];
- If Mayor Slaton was meant to be a permanent replacement, his term of office would have been for a full four years and not just until the end of Mr. Pizzi's term [A 787]; and

- Because section 112.51 preempts the Charter, and because Mr. Pizzi's term of office has not expired and his suspension merely created a temporary vacancy, he is entitled to reinstatement immediately [A 791].

Although Judge Cardonne Ely's order directs reinstatement immediately, it further stays enforcement for a 30-day period, "pending appellate review." [A 792]

This appeal ensued and this Court granted expedited review. In this appeal Mayor Slaton respectfully seeks reversal of the final judgment because Judge Cardonne Ely's final judgment (1) conflicts with the Florida Supreme Court's conclusions and directives, (2) fails to follow the Charter's plain language, which must be read *in pari materia* with section 112.51 and article IV, section 7(c), of the Florida Constitution, (3) incorrectly held that the Charter conflicts with section 112.51 and is thus preempted by state statute, and (4) expresses a concern that municipal charters should not be allowed to contain "vacancy" provisions like the one at issue—even though the Charter's provisions were expressly adopted by Miami Lakes' residents via referendum and in accordance with section 166.021, *et seq*, Florida Statutes.

SUMMARY OF THE ARGUMENT

With respect, Judge Cardonne Ely's final judgment erroneously determines that Mr. Pizzi is entitled to reinstatement. In addition to containing factual errors—such as erroneously finding that the Florida Supreme Court's order required reinstatement and the Governor failed to comply with the Supreme Court's order—the judgment is erroneous as a matter of law.

First, in reaching its decision, the Supreme Court necessarily had to read together relevant provisions of the Florida Constitution, Florida Statutes, and Miami Lakes' Charter, the latter of which was filed by Mr. Pizzi along with his mandamus petition. In doing so, the Supreme Court held that the suspension created a vacancy in office under the Charter, a new permanent mayor had been elected, and vacating the suspension order did not require reinstatement of Mr. Pizzi to office. Mr. Pizzi asked for guidance—and he got it. The Florida Supreme Court's determination of the issue is authoritative and binding. In the event this Court finds the Florida Supreme Court's determination to be dictum, well-established case law holds that Supreme Court dictum providing guidance should be given persuasive weight by lower tribunals. Indeed, the Supreme Court has exercised its discretionary review powers in other cases to review a district court of appeal decision by finding express and direct conflict between that decision and dicta in a Supreme Court decision.

Second, Miami Lakes' Charter has the effect of law and must be read *in pari materia* with section 112.51 and article IV, section 7(c). The Charter explicitly states that a suspension creates a vacancy in office and where, as here, more than six months remain in the mayor's term, an election must be held to select "a new Mayor." Upon the new mayor's taking office, the former mayor's term of office necessarily ends, the new mayor's term of office begins, and the new mayor serves until the expiration of the former mayor's original term of office. The trial court erred by failing to follow the Charter's plain language.

Third, the trial court incorrectly concluded that Miami Lakes' Charter conflicts with Florida's suspension statute, section 112.51. The statute—and more importantly, the Florida Supreme Court—recognize the concept that, as here, once a term has expired due to a vacancy in office and a permanent replacement has been elected, no right to reinstatement exists.

The trial court's order expresses a concern that municipalities should not be allowed to have a charter provision like the "vacancy" provision at issue. But the Charter here was adopted by referendum of the voters. Under home rule powers, Miami Lakes was free to adopt this charter provision if it so chose. And to the extent the trial court was expressing a concern about fairness, clearly any Mayor of Miami Lakes takes office subject to all of the terms and limitations of its charter—including the possibility that the "vacancy" provision might come into play.

Indeed, the Charter was already in place when former Mayor Pizzi took office, the Charter's provisions are clear, he swore to defend and uphold the Charter, and there is no unfairness in requiring him to abide by its terms.

Finally, although not determinative of the merits, as a procedural matter, the trial court wrongly denied Mayor Slaton's motion to dismiss all but Count III of Mr. Pizzi's complaint and wrongly rejected Mayor Slaton's argument that Mr. Pizzi's exclusive remedy for determining whether he should be reinstated to office rested in quo warranto.

ARGUMENT

Standard of Review

Questions involving the construction of laws are reviewed *de novo*. *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009). Summary judgments also are reviewed *de novo*. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2002).

Argument

I. MR. PIZZI HAS NO CLAIM TO THE OFFICE OF MAYOR OF MIAMI LAKES. HIS TERM OF OFFICE EXPIRED UPON THE ELECTION OF MAYOR SLATON—MR. PIZZI'S PERMANENT REPLACEMENT.

Under the Miami Lakes Charter, reinstatement of a suspended Miami Lakes mayor hinges on the amount of time remaining in that mayor's original term of office. The Charter states: "The office of a Councilmember [which includes the

office of mayor] shall become vacant upon his/her ... suspension ... from office in any manner authorized by law." [A 54 (emphasis added)] The Charter explains how the vacancy is to be filled.

If the Mayor's position becomes vacant and six months or more remain in the unexpired term, a special election shall be held for the election of a new Mayor within 90 calendar days following the occurrence of the vacancy. Pending the election, the office of Mayor shall be filled by the Vice-Mayor. The Council shall then appoint a new Vice-Mayor. No temporary Council appointment shall be made.

[A 55] Thus, if more than six months remain of a mayor's original term of office at the time of suspension, a permanent new mayor must be elected and the suspended mayor's term of office expires when the permanent new mayor is sworn into office. The Charter specifically says: "new Mayor." [*Id.*] However, if less than six months remain in the mayor's term at the time of suspension, the mayor is not replaced by a "new mayor" but instead is replaced by a temporary appointee. [*Id.*] These provisions for filling a vacancy in office apply regardless of the cause of the vacancy.

Undoubtedly, by expressly choosing to elect a "new mayor" when six months or more remain of a suspended mayor's original term, Miami Lakes' citizens seek to ensure stability and continuity in the mayor's office. They also

ensure there will be no lengthy period of time in which an appointee is placed in the mayor's office who was not elected for that purpose.⁴

When Mr. Pizzi was suspended from office due to his arrest, more than three years remained on his original term. [A 72] Accordingly, Miami Lakes did not appoint a temporary replacement. Instead, Miami Lakes held an election—at an expense of more than \$50,000 [A 455-57]—in which its citizens elected Wayne Slaton as their permanent "new mayor." The election results were certified by the canvassing board and neither Mr. Pizzi nor any other Miami Lakes' citizen challenged that election.

Given the Charter's plain language, it should have been obvious that Mr. Pizzi would be permanently replaced if he was suspended while six months or more remained in his original unexpired term.⁵ He took an oath, swearing to support and defend the Charter, including the vacancy provisions at issue, when he

⁴ The Miami Lakes Mayor has administrative responsibilities that set the Mayor apart from the other Council members, and the Town Manager. These include recommending the appointment of the Town Manager; appointing Council committees, which may include non-Council members; representation of Miami Lakes in all dealings with other governmental entities; and executing contracts, deeds, and other documents as authorized by the Council. [A 52] This is "a 'Mayor-Council-Manager' form of government." [A 50] While the Town does have a Vice Mayor who acts in the absence of the Mayor, that person is chosen from among the Council members for a one-year term. [A 52-53] The Vice Mayor is not elected to that position by the voters.

⁵ While the Charter should be clear to anyone, Mr. Pizzi is an attorney [A 97], currently a member in good standing of the Florida Bar, Bar No. 79545.

took office. [A 696] In fact, even though he was suspended from office at the time of the special election to permanently fill his vacancy, Mr. Pizzi could have run in the special election, but did not do so. *See, e.g., Spence-Jones v. Dunn*, 118 So. 3d 261, 262 (Fla. 3d DCA 2013) (example of a suspended official who ran, and was elected, in the election established to fill her vacancy).

The facts preceding this action firmly establish that the Florida Supreme Court agrees with this interpretation. The Florida Supreme Court reviewed and interpreted these provisions—which were explicitly placed before it by Mr. Pizzi's mandamus petition proceedings—and the Court concluded that Mayor Slaton is the new, permanent, mayor. [A 613]

When Mr. Pizzi filed his mandamus petition, he specifically asked the Court to issue an opinion that "would provide important guiding principles for the other courts of this State." [A 596 (citation and internal quotations omitted)] The Supreme Court gave that guidance in an order signed by five Justices.⁶ To determine whether Mr. Pizzi was entitled to his requested relief, the Court necessarily had to analyze the Charter, section 112.51, Florida Statutes, and the Florida Constitution. The Court's order could not be more clear: Mr. Pizzi was entitled to revocation of the suspension order so he could receive certain benefits to which he was entitled—such as back pay up until the time his position was filled.

⁶ The remaining two justices would not have required the suspension order to be lifted at all. [A 614-15]

But he was not entitled to reinstatement because—as the Supreme Court said—he was permanently replaced as mayor by Mayor Slaton. [A 613-14]

The Supreme Court's order states: "During Petitioner's suspension, [Miami Lakes] held a special election for mayor in accordance with the requirements of its charter. The permanent replacement mayor [Mayor Slaton] assumed office on October 8, 2013, and the new mayor's term will run until the next regularly scheduled election in November 2016. *Pizzi v. Scott*, No. SC14-1634, 2014 WL 7277376, at *1 (Fla. Dec. 22, 2014) (emphasis added). Although the Court directed the Governor to revoke its executive order suspending Mr. Pizzi, it explicitly stated that "it was not suggesting that the Governor is required to reinstate [Mr. Pizzi] to his former municipal office, which has been filled [by Mayor Slaton] by operation of a special election in accordance with the Town's charter." *Id.* (emphasis added). The Governor complied with the Supreme Court's directive by issuing an order vacating the suspension order, which expressly states that the order does not reinstate Mr. Pizzi to office.

Despite the highest court of this state explicitly finding Mayor Slaton to be Miami Lakes' "permanent replacement mayor" pursuant to the Charter, the trial court issued the underlying judgment declaring Mr. Pizzi mayor. The trial court's order completely ignores this language from the Supreme Court. Despite Mr. Pizzi inviting the Supreme Court to consider the Charter and issue an opinion meant to

provide guidance to other courts, the trial court found the Supreme Court "did not make any determination of the Town Charter," and suggested any language to the contrary may be non-binding dicta.

In fact, the trial court so misconstrued the Supreme Court's order that it concluded Governor Scott had violated the order by failing to reinstate Mr. Pizzi to office—despite the Court's explicit statement that the Governor was not required to restore him to office.⁷

The Supreme Court's pronouncements that Mr. Pizzi is not required to be reinstated and that Mayor Slaton is the "permanent replacement mayor" are not statements that may be dismissed as dicta—they are determinations made by the Court after argument by the parties on the issue. [A 587-90, 601-05 (Governor arguing reinstatement is improper because Mayor Slaton permanently replaced Mr. Pizzi)]; *Frost v. State*, 53 So. 3d 1119 (Fla. 4th DCA 2011), *overruled on other*

⁷ As noted in the Statement of Facts, the Supreme Court never issued a writ of mandamus, stating it believed the Governor would comply with its directives—and Mr. Pizzi never questioned the Governor's order vacating the suspension order in the Supreme Court or otherwise asked that a writ be issued. Instead, he brought this proceeding demanding that he now be reinstated to office. In its judgment, the trial court quoted the Governor's mandamus response which stated, in part, that interpretation of Miami Lakes' Charter is a local issue that could be ruled on by a circuit court. [A 789] But the Supreme Court's order came after the Governor's response, and the Court was very clear on how it interpreted the Charter—which is clear on its face. Further, the interpretation of section 112.51 and Article IV, section 7(c), of the Florida Constitution are matters of state law, not local issues. The trial court misconstrued what the Supreme Court said, as well as the import of the Governor's submission.

grounds, 94 So. 3d 481 (Fla. 2012)⁸. In *Frost*, the Fourth District explained the difference between obiter dictum and judicial dictum. Obiter dictum is a purely gratuitous statement made by the court that is wholly irrelevant to the case. *Id.* at 1123.

On the other hand, judicial dictum is a statement made by the court that may not be directly relevant to the disposition of the case, but which "involve[s] an issue briefed and argued by the parties." *Id.* (citation omitted). "Judicial dicta have the force of a determination by a reviewing court and should receive dispositive weight in an inferior court." *Id.* (citation omitted) (emphasis added). "An expression which might otherwise be regarded as dictum becomes an authoritative statement when the court expressly declares it to be a guide for future conduct." *State v. Fahringer*, 666 P.2d 514, 515 (Ariz. Ct. App. 1983) (citation omitted).

Because (1) Mr. Pizzi invited the Supreme Court to consider the effect of Miami Lakes' Charter and to issue an opinion to provide guidance to other courts of this state, (2) Mayor Slaton's status as permanent replacement mayor was

⁸ *Frost* was summarily overruled by the Florida Supreme Court as a "tag" case to another case, *Harris v. State*, 71 So. 3d 756 (Fla. 2011), in which the Court rejected the district court's finding regarding the sufficiency of a "dog sniff" to provide a police officer with probable cause to conduct a search. The Florida Supreme Court's *Harris* decision subsequently was reversed by the United States Supreme Court on the "dog sniff" issue. See *Florida v. Harris*, 133 S. Ct. 1050 (2013).

specifically argued by the Governor in that case, (3) the Charter and section 112.51 were directly before the Supreme Court, and (4) Mayor Slaton's status as permanent replacement mayor stems from the Charter's provisions, the Supreme Court's statements are authoritative and should receive "dispositive weight." *Frost*, 53 So. 3d at 1123. The trial court's disregard of the Supreme Court's conclusions is clear error.

Moreover, even if the Supreme Court's statements regarding a new, permanent replacement mayor could be characterized as dictum, well-established case law holds that "dictum of the highest court of this State, in the absence of a contrary decision by that court, should be given persuasive weight" by a district court of appeal. *Mejia v. Citizens Prop. Ins. Corp.*, No. 2D13-2248, 2014 WL 6675717, *2 (Fla. 2d DCA Nov. 26, 2014) (quoting *Milligan v. State*, 177 So. 2d 75 (Fla. 2d DCA 1965)); *see also Gonzalez v. State*, 125 So. 3d 373, 374 (Fla. 3d DCA 2013) (following *Milligan* and relying on Supreme Court dicta for proper construction of criminal statutes). Indeed, the Supreme Court recognizes that its dicta is so persuasive that it has exercised its discretionary jurisdiction to review district court of appeal decisions that conflict with Supreme Court dicta and actually "receded" from dicta when necessary. *See, e.g., Cowan, Liebowitz & Latman, P.C. v. Kaplan*, 902 So. 2d 755, 756 (Fla. 2005). Thus, even if this Court

finds the Supreme Court's statements to be dicta, this Court should nevertheless give significant weight to the Court's statements in determining the issues here.

In addition to ignoring the Supreme Court's dispositive pronouncement of the issue, the trial court's order completely misconstrues the Charter. The trial court found that, although the Charter provides different mechanisms for selecting a replacement due to a suspension (depending on the amount of time remaining in the term), the replacement always serves on a temporary basis. [A 785] The court found Mayor Slaton's election did not cause Mr. Pizzi's term to expire because Mayor Slaton could serve, at most, the remainder of Mr. Pizzi's term. [A 787] In reaching to make this conclusion, the trial court went so far as to conclude that, had the Charter intended Mr. Pizzi's term to end upon Mayor Slaton's taking office, the Charter would have required that Mayor Slaton be elected for a new full four year term. This completely ignores the fact that Mayor Slaton simply replaced Mr. Pizzi and filled out the original term of office—which, as to Mr. Pizzi and pursuant to the terms of the Charter—ended when Mayor Slaton became the permanent new mayor.

In reaching this result, the trial court failed to consider that the Charter does not call for a temporary replacement when the suspended mayor's original term has at least six months remaining, but instead calls for a "new mayor." It also ignores that the Charter explicitly calls for a temporary replacement when the suspended

mayor's original term has less than six months remaining. By explicitly calling for a temporary replacement in one instance but calling for a "new mayor" in the other, the Miami Lakes' citizens expressly indicated that their "new mayor" was not to serve on a temporary basis.

As the Supreme Court concluded, the express terms of the Charter establish that Mr. Pizzi's term of office expired when a "new mayor" was sworn into office and the "new mayor" was permanently elected to replace Mr. Pizzi. The fact the duration of the new mayor's term is calculated based on the amount of time remaining in the former mayor's term does not mean Mr. Pizzi's term of office did not expire. It simply means that the remainder of Mr. Pizzi's original term of office is now Mayor Slaton's term of office in accordance with the term of office dates set forth in the Charter. [A 53]

II. NO CONFLICT EXISTS BETWEEN THE CHARTER AND SECTION 112.51, FLORIDA STATUTES, OR ARTICLE IV, SECTION 7(C) OF THE FLORIDA CONSTITUTION.

The trial court recognized that local governments have broad powers of self-government under the home rule powers of article IV, section 7(c) of the Florida Constitution, and section 166.021, Florida Statutes. [A 787] The court nevertheless held that Miami Lakes' Charter provisions governing vacancy of the Mayor's office and the manner and effect of filling that position are preempted by

Section 112.51, Florida Statutes. [A 791] This finding is in direct conflict with well-settled law.

Section 112.51 provides the Governor with authority to suspend elected officials. In relevant part, it states:

(3) The suspension of such official by the Governor creates a temporary vacancy in such office during the suspension. Any temporary vacancy in office created by suspension of an official under the provisions of this section shall be filled by a temporary appointment to such office for the period of the suspension. Such temporary appointment shall be made in the same manner and by the same authority by which a permanent vacancy in such office is filled as provided by law. If no provision for filling a permanent vacancy in such office is provided by law, the temporary appointment shall be made by the Governor.

...

(6) If the municipal official is acquitted or found not guilty or is otherwise cleared of the charges which were the basis of the arrest, indictment, or information by reason of which he or she was suspended under the provisions of this section, then the Governor shall forthwith revoke the suspension and restore such municipal official to his office; and the official shall be entitled to and be paid full back pay and such other emoluments or allowances to which he or she would have been entitled for the full period of time of the suspension. If, during the suspension, the term of office of the municipal official expires and a successor is either appointed or elected, such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal official was suspended under the provisions of this section, and he or she shall not be reinstated.

§ 112.51, Fla. Stat. (emphasis added).

Section 112.51 does not conflict with the Charter. Although the default rule is that suspended officials will be reinstated upon acquittal, subsection 112.51(6) specifically provides that the official "shall not be reinstated" if "the term of office of the municipal official expires and a successor is ... elected[]" § 112.51(6). Likewise, article IV, section 7(c), of the Florida Constitution provides for municipal charters to adopt similar provisions. That is precisely what occurred here. As the Florida Supreme Court explained, Mr. Pizzi's term expired when Mayor Slaton assumed office and "the new mayor's term will run until the next regularly scheduled election in November 2016." *Pizzi v. Scott*, No. SC14-1634, 2014 WL 7277376, at *1 (Fla. Dec. 22, 2014).

The doctrine of *in pari materia* requires courts to construe related laws together so that they "illuminate each other and are harmonized." *McGhee v. Volusia Cnty.*, 679 So. 2d 729, 730 n.1 (Fla. 1996). Because ordinances and charter provisions have the effect of law, where, as here, a local charter provision and controlling state statute relate to the same subject matter, they must be read *in pari materia*. *Ducoff v. State*, 273 So. 2d 387, 389 (Fla. 1973) (where statute prohibited remunerative gifts to employees unless otherwise provided by law, and where ordinance—which had the effect of law—permitted receipt of a gift under certain circumstances, when read *in pari materia*, gifts received under circumstances set forth in the ordinance were not illegal); *Orr v. Quigg*, 185 So.

726, 728-29, 135 Fla. 653 (1938) (ordinance and statutes related to same subject matter must be read *in pari materia*); *Great Outdoors Trading, Inc. v. City of High Springs*, 550 So. 2d 483, 485-87 (Fla. 1st DCA 1989) (ordinance and statutes must be read *in pari materia* and read in a manner that reaches a reasonable result).

Indeed, if part of a law appears to have a clear meaning when considered alone but that meaning is inconsistent with other related laws, courts must read all of the related laws *in pari materia* and attempt to harmonize those laws and give effect to the laws' intent. *E.A.R.*, 4 So. 3d at 629; *see City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1244-45 (Fla. 2006) ("When possible, we must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.") (citations and quotation marks omitted). When construing related statutes and other law, "[n]o literal interpretation should be given that leads to an unreasonable or ridiculous conclusion or to a purpose not designated by the lawmakers." *City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1281 (Fla. 1983).

Miami Lakes' Charter is in perfect harmony with Section 112.51 and the Florida Constitution. The Charter provides that a suspended mayor's term will expire when the suspension occurs if six months or more remain in the original term and a new mayor is elected. [A 54-55] Section 112.51(6) expressly contemplates the possibility that a suspended official may not be reinstated in the

event the official's term expires during the suspension, as does Article IV, Section 7(c). *See* § 112.51(6), Fla. Stat.; Art. IV §7(c), Fla. Const. The Charter—not the statute—is the definitive source for determining the scope of a mayor's term. [A 53 (describing the scope of mayor's term of office)]; § 112.51, Fla. Stat. (discussing suspension and removal of officials but not defining the scope of a term of office). The only logical interpretation of the Charter is that a mayor's term expires when he is suspended and more than six months remain in his unexpired term and a replacement mayor is elected. Thus, Mr. Pizzi's term expired upon the election of Mayor Slaton. By finding the Charter in conflict with the statute despite this reasonable interpretation, the trial court contravened its duty to read the two sources of law *in pari materia*.

The only way for the trial court to find the Charter in conflict with the statute was for it to reject the Charter's determination of the scope of a suspended mayor's term. In addition to ignoring fundamental canons of interpretation, the court fails to adequately account for the broad powers granted to local governments to address the precise issues addressed by the Charter. The Florida Constitution vests local governments with home rule powers by which they "may exercise any power for municipal purposes except as otherwise provided by law." Art. VIII, § 2(b), Fla. Const. The Florida Legislature codified these powers in the Municipal Home Rule Powers Act. *See* §166.021 *et seq.*, Fla. Stat.

A municipality's home rule powers explicitly extend to municipal charters, the terms of elected officers, and the manner of their election. *See* § 166.021(4), Fla. Stat. These matters must be approved by referendum of the electors. *See id.* the Miami Lakes' Charter was approved by the electors in 2000 and the provisions at issue here were approved as part of the Charter. [A 47, 54-55] Courts will not disturb a municipality's exercise of its home rule powers when the powers are exercised in furtherance of a valid "municipal purpose" and the issue is not preempted by state law. *See State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978).

A court cannot substitute its own judgment for what it believes a suspended mayor's term should be. The electors of Miami Lakes made that decision by approving the Charter in a referendum. Miami Lakes' determination that Mr. Pizzi's term ended upon his suspension and the subsequent election of Mayor Slaton is a valid exercise of home rule authority and serves the obvious municipal purposes of ensuring stability and continuity in the Mayor's office and of ensuring the office is held by an official specifically elected to serve in such capacity. Although section 112.51 generally requires reinstatement of elected officials upon acquittal of criminal charges, it expressly prohibits reinstatement of an official whose term has ended. Mr. Pizzi's term expired upon Mayor Slaton's taking office, and Mr. Pizzi is not entitled to reinstatement.

Likewise, the Charter does not conflict with the Florida Constitution. The Florida Supreme Court stated "[u]nder the Florida Constitution, when a municipal officer is indicted or otherwise charged with crimes, the Governor has discretion to suspend that municipal officer from office until acquitted." *Pizzi*, 2014 WL 7277376, at *2 (citing Art. IV, § 7(c), Fla. Const.). According to the constitutional provision cited by the Supreme Court, the Governor also has the ability to appoint a replacement for the suspended official who may serve for the period of the suspension "unless these powers are vested elsewhere by law or the municipal charter." Art. IV, § 7(c), Fla. Const. (emphasis added). By using such language, the Florida Constitution specifically contemplates the possibility of a municipal charter providing for a replacement in a manner other than appointment by the Governor and for a duration longer than the period of suspension. This is precisely what Miami Lakes' Charter does. In fact, reading section 112.51 as preempting the Charter would mean that the Charter's entire method for replacing the mayor is preempted and only the Governor could appoint a replacement. But this is clearly not intended and Mr. Pizzi has made no such argument.

Also, as noted, in addition to containing erroneous rulings on the law, the trial court's order contains a number of factual errors. The trial court found Governor Scott's Executive Order 13-217 "is in direct contravention of the order of the Supreme Court of Florida" because it does not reinstate Mr. Pizzi as mayor.

[A 780] As explained in detail above, the Florida Supreme Court did not require reinstatement of Mr. Pizzi—it expressly stated "it was not suggesting that the Governor is required to reinstate [Mr. Pizzi] to his former municipal office, which has been filled [by Mayor Slaton] by operation of a special election in accordance with the Town's charter." [A 613] No reasonable interpretation of the Court's order suggests the Court intended to require reinstatement of Mr. Pizzi. Indeed, as noted, the Supreme Court withheld issuance of the writ of mandamus under the belief the Governor would comply with its order and the Governor immediately vacated the suspension order, stating reinstatement was not required under the Court's order. Had the Supreme Court believed the Governor's order did not comply with its directives, it would obviously have issued a writ directing the Governor to comply—but it did not. And Mr. Pizzi never asked the Court to do so.

In summary, the Charter, when read *in pari materia* with both section 112.51 and the Florida Constitution, clearly confirms that Mr. Pizzi's term of office expired upon Mr. Slaton becoming the permanent "new mayor." The trial court erred in finding to the contrary and directing that Mr. Pizzi be reinstated to office.

III. THE TRIAL COURT ERRED IN HOLDING THAT A DECLARATORY JUDGMENT RATHER THAN QUO WARRANTO WAS THE CORRECT REMEDY TO DETERMINE THE ISSUE IN THIS CASE.

In addition to making the legal and factual errors outlined in Issues I and II, the trial court also erred in ruling that quo warranto was not the proper and

exclusive remedy. As Mayor Slaton argued below, quo warranto is the correct, and exclusive, remedy available to determine the dispute. [A 150-54, 358-59]

"[Q]uo warranto is the proper remedy to test the right of a person to hold an office[.]" *Winter v. Mack*, 194 So. 225, 228, 142 Fla. 1 (1940); see Philip J. Padovano, *Florida Civil Practice* § 30:3 (2012) (same); 43 Fla. Jur. 2d *Quo Warranto* § 19, at 484 (2015) (same). The Florida Supreme Court has specifically held that quo warranto is the correct procedure where, as here, there is an officeholder, and a challenger claims to have a better title to the office.

"When an office is already filled by an actual incumbent, exercising the functions of the office de facto and under color of right, . . . the party aggrieved, who seeks an adjudication upon his alleged title and right of possession to the office, will be left to assert his rights by the aid of an information in the nature of a quo warranto, which is the only efficacious and specific remedy to determine the questions in dispute."

City of Sanford v. State, 75 So. 619, 619-20, 73 Fla. 69 (1917) (citation omitted) (emphasis added). Where quo warranto proceedings are available, "they are held to be the exclusive method of determining the right to hold and exercise a public office." *McSween v. State Live Stock Sanitary Bd. of Fla.*, 122 So. 239, 244, 97 Fla. 750 (1929); 43 Fla. Jur. 2d *Quo Warranto* § 8, at 471 (2015) (same).

The trial court's order states that quo warranto is not available here because Mr. Pizzi did not run against Mayor Slaton in the 2013 special election. [A 781-82] Quoting *Fouts v. Bolay*, 795 So. 2d 1116, 1117 (Fla. 5th DCA 2001), the trial

court concluded that quo warranto is reserved solely for election contests. [A 782] Respectfully, the trial court misapprehended *Fouts* which, on its facts, involved an election contest between two contestants. On those limited facts, the Fifth District addressed what showing the challenger would have to make to prevail. *Fouts*, 795 So. 2d at 1117.

But the abundant authority cited above makes clear that quo warranto is the accepted and exclusive procedure to try title to office; it is not reserved just for election contests. Indeed, at the hearing below, Mr. Pizzi informed the trial court that a writ of quo warranto was the remedy he sought. [A 763]

Mayor Slaton recognizes that this argument addresses an entirely procedural issue. He further recognizes that, as to the merits, this Court has the power to treat the matter "as if the proper remedy had been sought" Fla. R. App. P. 9.040(c). He raises this argument solely because of the practical consequences related to the proper choice of remedy. This case should have been a one-count quo warranto action between Mr. Pizzi and Mayor Slaton, but instead was a multi-count declaratory judgment action, in which Miami Lakes and its Clerk⁹ were unnecessarily made defendants, and Ms. Collins was listed as an additional plaintiff.

⁹ The Town Clerk was eventually dropped by agreement. [A 312]

Because Mr. Pizzi's sole remedy was quo warranto, the trial court erred in failing to grant Mayor Slaton's motion to dismiss all counts except Count III. Accordingly, in addition to ruling in Mayor Slaton's favor on the merits, this Court also should reverse and hold that Mayor Slaton's motion to dismiss all counts except Count III should have been granted.

CONCLUSION

Pursuant to constitutional and statutory home rule powers, the citizens of Miami Lakes adopted a Charter specifically tailored to ensure consistency and stability in the office of Mayor. The Charter—which is not in conflict with Section 112.51, Florida Statutes—clearly shows Mayor Slaton is Miami Lakes' permanent replacement mayor. This was expressly found by the Florida Supreme Court. The trial court clearly erred by finding to the contrary. Mayor Slaton respectfully requests this Court reverse the final judgment and remand the cause to the trial court with directions to deny Mr. Pizzi's requested relief and to issue an order in favor of Mayor Slaton. This Court also should reverse and hold that Mayor Slaton's motion to dismiss all counts except Count III should have been granted.

Respectfully submitted,

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I HEREBY CERTIFY that the font used in this brief is the Times New Roman 14-point font and that the brief complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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